CF0000062821

(62)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CR.A.NO.1362 OF 1999

(7108)

Filed on 10/5/99
by Shri P.S. Singh Advocate
Rh. A.R.

Appellant-
(In Jail)

Atma Ram s/o Shri Panka ram Rawat, aged about 30 yrs, occupation- Agriculture, Residence Alola, Police Station- Kapu, Distt- Raigarh (M.P.)

Vs-

Respondents;

The State of Madhya Pradesh through the P.S.Kapu, Distt-Raigarh(MP).

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

(25)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.1362/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo, Ag.C.J. and
Hon'ble Mr. Sunil Kumar Sinha, J.

7-2-2007

When the appeal is called out, Mr. Prabhakar Singh, counsel for the appellant is not present. It is stated that he is practicing at Jabalpur. Therefore, Mr. Rakesh Jha, Advocate, was appointed to argue the appeal on behalf of the appellant.

Mr. Ashish Shukla, Additional Public Prosecutor for the State/ respondent.

As per the PUD dated 12-1-2007, the accused/appellant has not been able to furnish bail bonds in pursuance of the bail order, therefore, the appeal is heard finally.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, Ag.C.J.: -

This appeal is directed against the judgment of conviction and order of sentence dated 17th March, 1999 passed by the 2nd Additional Sessions Judge, Raigarh, in Sessions Trial No.2/98, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 307 of the I.P.C., sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that on 18-11-1997 injured Jhitku along with his grand-father Mangal Sai went to Kharri River for taking bath. When they were returning, they saw that the accused/

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 1362/99 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

appellant was blocking the street drain. Jhitku asked the accused as to why he is spoiling the street drain on which the accused became angry and said, "how you are concerned, who are you to say like this" and attacked Jhitku with a spade on his head as a result of which Jhitku became unconscious. In the mean time, the accused ran away. The matter was reported by Jhitku to the police under Ex.P-1. Jhitku was medically examined by Dr. J. Minj (PW-10) who prepared the injury report Ex.P-13, he advised for X-ray. As per the X-ray report, parietal bone of Jhitku was found fractured. On the basis of memorandum Ex.P-2 given by the accused, the weapon of offence spade was recovered under Ex.P-3.

After completion of investigation, charge sheet was filed in the Court of Sessions Judge, Raigarh from where learned 2nd Additional Sessions Judge, Raigarh received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined eleven witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence.

Learned Additional Sessions Judge after hearing counsel for the respective parties convicted and sentenced the accused as aforementioned.

We have heard Mr. Rakesh Jha, learned counsel for the appellant and Mr. Ashish Shukla, learned Additional Public Prosecutor on behalf of the State/respondent.

As far as involvement of the accused/appellant in the crime in question is concerned, Jhitku Ram (PW-1), the injured himself, has stated in

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

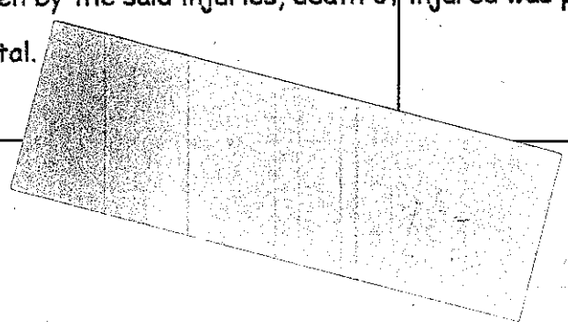
मामला क्रमांक .G.A.362/99 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

his evidence that on the fateful day when he was returning after taking bath in the river he saw that the accused was blocking the street drain on which he asked him as to why he is blocking the street drain. The accused became angry and asked him "who are you to question" and the accused assaulted him with the spade on his head & chest. The above evidence of Jhitku is corroborated by the evidence of Hendal Ram (PW-2) & Mangal Sai (PW-4), grand-father of Jhitku who was accompanying Jhitku. In cross-examination of these witnesses, defence has not been able to elicit any circumstance which discredits the evidence of these witnesses. Therefore, involvement of the accused/appellant in the crime in question is established.

Now, coming to the question of conviction and sentence of the accused/appellant under Section 307 of the I.P.C., Dr. M.D. Joshi (PW-6) has stated in his evidence that on 15-12-1997 when he was working as Medical Officer in K.G. Hospital, Raigarh, Jhitku was brought to him for X-ray, he took X-ray of the skull of Jhitku and he saw that the parietal bone was fractured. His report is Ex.P-5 and X-ray plates are Exs.P-6 & P-6A. Dr. J. Minj (PW-10) has stated in his evidence that on 18-11-1997 he examined Jhitku, there was a cut wound in the middle of the head in the size of 4 ½" × ½" × bone deep and there was another injury on the left side of the chest below the clavicle bone in the size of 1 ½ " × ½ " × ¼ ". The injuries were inflicted by a sharp and hard object. The above injuries could be caused by a spade. In his opinion, had the injured was not properly treated, then by the said injuries, death of injured was possible and the injuries were fatal.



उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...G.A.1362.../99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In order to attract the provisions of Section 307 of the I.P.C., the person must have acted with intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder. Therefore, the accused must have an intent coupled with some overt act in execution thereof in order to hold the accused guilty for commission of offence under Section 307 of the I.P.C.

In the matter of R. Prakash vs. State of Karnataka reported in 2004 AIR SCW 815, the Apex Court held that

> "It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertain without any reference at all to actual wounds. The Sections makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section."

In the present case, as has been discussed earlier, when injured Jhitku asked the accused not to block the street drain, the accused objected to it and immediately attacked the deceased with the spade i.e. the sharp edged iron weapon on head & chest as a result of which Jhitku received fatal injury on his head and his parietal bone was fractured. Therefore, intention of the accused or at least that the accused had the

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मामला क्रमांक G.A.1362/99 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

knowledge that by attacking with a spade he may likely to cause the death is established. The manner in which the injuries were caused, the weapon of offence used and the place of body where the injuries were inflicted establishes intention of the accused that the injuries were inflicted with a deadly weapon like spade with intention or knowledge to cause the death of Jhitku. Therefore, offence against the accused under Section 307 of the I.P.C. is established and he has been rightly convicted under that Section.

Learned counsel for the appellant argued that looking to the nature of offence and background of the crime, sentence imposed upon the accused/appellant is too excessive.

It is said that the accused/appellant is in detention since 19-11-1997, as per para 24 of the judgment of the trial Court, thereby he has already undergone the sentence of nine years two months. In the facts and circumstances of the case, we are of the considered opinion that it will meet the ends of justice if he is sentenced to the period already undergone.

Accordingly, the appeal is allowed in part. While maintaining conviction under Section 307 of the I.P.C., sentence of life imprisonment imposed upon the accused/appellant is set aside and instead thereof he is sentenced to the period already undergone. The accused be set at liberty forthwith, unless required to be detained in any other case.

Sd/-
Acting Chief Justice

Sd/-
SUNIL KUMAR SINHA
Judge

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9/12/2 Dec 12/12/07